

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

| | | |
|--------------------------|---|---------------------------|
| UNITED STATES OF AMERICA | § | |
| | § | |
| VS. | § | CRIMINAL NO. G-01-21 |
| | § | CIVIL ACTION NO. G-05-251 |
| DESHAWN ANDREWS | § | |

OPINION AND ORDER

Before the Court is the Report and Recommendation of the United States Magistrate Judge which recommends that the “ Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody” filed by Deshawn Andrews, be denied. Andrews filed timely objections to the Report and Recommendation.

In his objections, Andrews complains of a claim the Magistrate Judge failed to address: alleged prosecutorial misconduct during closing argument. Andrews claims the prosecutor improperly referred to a statement by Andrews which was suppressed by Order of the Court. The alleged statement appears at pages 357, line 25 and 358, line 1, of the trial transcript and reads, in pertinent part, “ **He says** he has cocaine base in his pocket.” (emphasis added) Because the Court did not recall the statement, it requested the Court Reporter to review the audio tape of the trial. Upon review, it was discovered that the prosecutor clearly said, “ **Because** he has cocaine base in his pocket.” (emphasis added) While the alleged statement would have been improper, what was actually said by the prosecutor was not violative of the Court’ s suppression order. Accordingly, Andrews’ claim is without support and it is denied.

As to the Report and Recommendation, this Court finds, after *de novo* review pursuant to 28 U.S.C. § 636(b)(1)(C), that the Report and Recommendation is a well reasoned and correct


application of law to the issues raised by Andrews and, accordingly, it is **ACCEPTED** by the Court in its entirety and incorporated by reference herein; Andrews' objections are found to be without merit and they **REJECTED**.

It is, therefore, the **ORDER** of this Court that the " Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody" (Instrument no. 168) of Deshawn Andrews, is **DENIED in its entirety**.

It is further **ORDERED** that the record be **CORRECTED** by the Court Reporter to accurately reflect the trial proceedings. The Court Reporter **SHALL** prepare a corrected page 357 and submit it to the District Clerk who **SHALL** substitute the corrected page for the original page previously filed in Volume II of the Trial Transcript. The original page 357 **SHALL** be enclosed in an envelope and retained in the Court' s file.

It is further **ORDERED** that an appropriate docket entry **SHALL** be made to reflect that the corrected page 357 has been **substituted** for the original incorrect page 357 in the Trial Transcript and the parties **SHALL** be notified of the correction and substitution.

DONE at Galveston, Texas, this 13th day of January, 2006.



Samuel B. Kent
United States District Judge